

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

C.A. 1248/98(F)

D.C. Galle Case No. 10095/P

Magedara Gamage Dharmawathie
Karagoda,
Yakkalamulla.

Appellant

Vs.

Magedara Gamage Chandrasena
Beeriyagodawatte,
Karagoda,
Yakkalamulla,

And Others

Respondents

Before : **K. T. CHITRASIRI, J.**

Counsel : Sandun Nagahawatte for the 5th Defendant-Appellant
Lakshman Perera, P.C. for the Plaintiff-Respondent

Argued &

Decided on : 13.03.2014

K. T. CHITRASIRI, J.

Learned Counsel for the appellant concluded his submissions made in support of this appeal. This is an appeal preferred to have the judgment dated 27.11.1998 of the learned District Judge of Galle, set aside. This matter being a partition action, learned District Judge made order to partition the land sought to be partitioned in accordance with the share allocation shown in his judgment dated 27.11.1998. In that allocation of shares, a fraction amounting to 438/1152 from the corpus was allotted to the 5th defendant-appellant. Being aggrieved by the said allocation of shares, 5th defendant preferred this appeal seeking *inter alia* to set aside the judgment dated 27.11.1998 and to have a bigger share from the corpus, as claimed in her statement of claim dated 08.11.1990 which is found at page 51 in the appeal brief.

Contention of the learned Counsel for the Appellant is that the trial Judge was in error when he decided to disregard the rights referred to in the deed bearing No.402 marked by the appellant as 5V6 . His argument is that the aforesaid deed 402 also deals with the land sought to be partitioned and therefore the learned District Judge should have allocated a bigger share to the appellant taking into account the rights referred to in the said deed 402 as well. Hence, the only issue in this appeal is to ascertain whether or not the land referred to in the deed 402 deals with the land sought to be partitioned in this case.

Decision of the learned District Judge in this regard is that the land referred to in the deed 402 does not relate to the land sought to be partitioned having held that it may be a land adjacent to the corpus of this action. He has given cogent reasons for his decision and those are as follows:

“මිලග හබය පවතින්නේ 5 වන විත්තිකරු ප්‍රකාශ කරන අන්දමට පැමිණිලිකරුගේත්, 2,3 විත්තිකරුවන්ගේත්, චන්ද්‍රාවතී, සිරිසේන, නන්දසේන, යන අයගේත්, ආරියසේන යන අයගේත් අයිතිවාසිකම් 402 දරණ 5වි6 දරණ ඔප්පුවෙන් 5 වන විත්තිකාරියට සම්පූර්ණයෙන්ම හිමිකර දී ඇතිද යන්න තීරණය කිරීමයි. මේ සම්බන්ධයෙන් පැමිණිලිකරුත්, 3 වන විත්තිකරුත්, 4 වන විත්තිකරුත් ප්‍රකාශ කර සිටියේ ඔවුන් විසින් මෙම නඩුවට අදාළ දේපලක් එක් ඔප්පුව මගින් 5 වන විත්තිකාරියට බැහැර නොකළ බවයි. එහෙත් 5වන විත්තිකාරිය කියා සිටියේ තමා විසින් මෙම නඩුවට අදාළ දේපල එක් 5වි6 දරණ ඔප්පුවෙන් මිලදී ගත් බවත්, ඒ අනුව සෙසු පාර්ශවකරුවන්ට මෙම ඉඩමෙන් අයිතිවාසිකම් නොලැබෙන බවයි. මේ සම්බන්ධයෙන් 5වි 6 දරණ ඔප්පුවත්, 5වි 6 දරණ ඔප්පුවේ සඳහන් කර ඇති 351 එනම් : 3වි1 දරණ ඔප්පුවත්, සලකා බැලීම මෙම කරුණ නිරාකරණය කර ගැනීමට

Then the question arises as to the correctness of the aforesaid decision of the learned District Judge. Admittedly, the rights of the appellant in the deed 402 derive from the deed bearing No.351 marked as 3V1 in evidence. Three lands had been dealt with, by the said deed 351 and those three lands are shown separately as 3 items in the schedule to that deed.

The name, boundaries and the extent of the land described in the **item 2** found in the schedule to the deed 351 is almost similar to the name, boundaries and the extent of the land sought to be partitioned in this case which is depicted in the plan bearing No.134 marked "X" in evidence. Hence, it is correct to decide that the rights referred to in the said **item 2** are in relation to the land sought to be partitioned. Indeed, there is no dispute in that connection.

Contention of the appellant is that the land referred to in the **item 3** found in the schedule to the deed 351 also deals with the land subjected to in this case. It is practically unusual to have dealt with in respect of one land having mentioned it separately, as two distinct lands in one deed, though such a contention is being advanced by the learned Counsel for the appellant. The position of the plaintiff-respondent is that the land described in item 3 is a different land.

Learned District Judge in deciding this issue has taken immense pain by comparing the names and the boundaries of the land referred to in the said **item 3** in the schedule with that of the name and the boundaries of the land

shown in the plan marked "X". In doing so, he has carefully considered the discrepancies as to the names and the boundaries of the two lands in question and has come to the conclusion with valid reasons that the land referred to in the item 3 is a land different to the land sought to be partitioned. I do not see any error in the manner that he has compared those important aspects namely the names and the boundaries of the two lands, those being the criteria in identifying a land.

Indeed, fraction of the title of the parties including the appellant, to the land subjected to in this case derives from the land described in the **item 2** referred to in the schedule to the deed 351. Some of the vendees to the deed 351 have become parties to this action too; and except for the appellant, all of them have restricted their claims to the land referred to in the said **item 2** without claiming rights from the land referred to in the **item 3** in the schedule to the deed 351.

However, looking at the manner in which the learned District Judge has considered the issue, it is my view that he has come to the correct decision when he decided that the land referred to in the item 3 of the deed 351 does not relate to the corpus in this case. Moreover, the appropriate manner in deciding such an issue is to look at the name, boundaries and the extent of the lands involved which criteria had been followed by the learned District Judge. Accordingly, I am not inclined to disturb the share allocation determined by the learned trial judge.

In the circumstances, I do not wish to interfere with the decision of the learned District Judge as to the rejection of the rights claimed by the appellant relying upon the deed 402.

For the aforesaid reasons this appeal is dismissed with costs.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL

AKN